***THE HONOURABLE SRI JUSTICE P.S.NARAYANA**

+WRIT PETITIONS No. 18339 OF 2007

% DATED: 12.12.2007

M.S.Ramayya Constructions Pvt.Ltd.,
Registered office at 2-77/A, Pendurthi road,
Vepagunta,
Visakhapatnam,
Rep., by its Managing Director,
Mogga Sitaramayya.

.....
PETITIONER

AND

The Simhachalam Devasthanam,
Rep., by its Executive Officer,
Visakhapatnam District.

.....RESPONDENT

! COUNSEL FOR THE PETITIONER: SRI P.ROY REDDY

^ COUNSEL FOR THE RESPONDENTS: SRI V.T.M.PRASAD

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>Head Note

? Cases referred

1. AIR 1982 ANDHRA PRADESH 300
2. AIR 1928 MADRAS 786
3. 1991 Supp (2) Supreme Court Cases 228
4. 1995 Supp (3) Supreme Court Cases 249
5. 1925 Patna 241
6. AIR 1929 Patna 41

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BETWEEN:

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The Simhachalam Devasthanam,
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.....RESPONDENT

ORDER:

Heard Sri Ugra Narasimha, learned counsel representing Sri Roy Reddy, learned counsel for the Writ Petitioner, and Sri V.T.M.Prasad, learned counsel representing the respondent.

2. Writ Petition is filed for a writ of mandamus declaring the action of the respondent in interfering with the peaceful possession and enjoyment of the petitioner's plots, an extent of 3645 sq.yards in Sy.No.49 and Sy.No.50/1 of Purushothapuram village, Pendurthi mandal, Visakhapatnam District, as illegal, and arbitrary.

3. Sri Ugranarasimha, learned counsel representing the writ petitioner, had taken this Court through the contents of the affidavit filed in support of the Writ Petition, counter affidavit, and also the reply affidavit, and specifically pointed out to the Survey Settlement Register of the period concerned and would maintain that in the light of the facts and circumstances and also the nature of the zirayathi land, the stand taken by the respondent cannot be accepted.

4. Learned counsel also would submit that though the title itself is being put into controversy by the respondent it is not a fit case whether the writ petitioner to be driven to a competent civil Court and in the light of the respective stands taken by the parties,

the Writ Petition to be allowed.

5. Per contra, Sri V.T.M.Prasad, learned counsel representing the respondent, had taken this Court through the contents of the counter affidavit and would maintain that the Writ Petition is not a *bona fide* one at all and the same is liable to be dismissed.

6. Heard the counsel and perused the respective pleadings of the parties and also the material placed before this Court. In the affidavit filed in support of the Writ Petition it is averred that the petitioner is the absolute owner and possessor of a total extent of 3645 sq.yds. The details of the plots belonging to the petitioner had been furnished in paragraph 4 of the affidavit filed in support of the Writ Petition which reads as hereunder:

i) plot Nos.193, 194 and 195, admeasuring 1200 sq.yds and site admeasuring 445 sq.yds in Sy.No.49 & 50/1, purchased vide sale deed (document No.1132/07), dated 03-02-2007, executed by Pathiwada Sitamahalakshmi.

ii) Plot No.201, admeasuring 400 sq.yds, in Sy.No.49, purchased vide sale deed (document No.1133/2007), dated 03-02-2007, executed by P.B.Jyotsna Rani.

iii) Plot No.200, admeasuring 400 sq.yds, in Sy.No.49, purchased vide sale deed (document No.1134/07), dated 03-02-2007, executed by Atluri Bhavani Devi.

iv) Plot No.197, admeasuring 400 sq.yds, in Sy.No.49, purchased vide sale deed (document No.1135/07) dated 03-02-2007, executed by Bobba Swatantra Kumari.

v) Plot No.196, admeasuring 400 sq.yds, in Sy.No.49, purchased vide sale deed (document No.1136/07), dated 03-02-2007, executed by

Koneru Viplava Kumari.

vi) Plot No.199, admeasuring 400 sq.yds, in Sy.No.49, purchased vide sale deed (document No.1137/07), dated 03-02-2007, executed by Bobba Jawaharlal.

7. Further it is stated that the petitioner is in possession of the plots belonging to it. The respondent-Simhachalam Devasthanam has absolutely no manner of right, title or interest in respect of the land over which plots belonging to the petitioner are situated. Yet, the respondent's officials have been frequently visiting the plots belonging to the petitioner and are trying to prevent the petitioner from developing the same and are interfering with the petitioner's peaceful enjoyment and occupation of the plots. On 26-08-2007, the officials again tried to enter the land belonging to the petitioner for making markings and the same was resisted by them. The action of the respondent in frequently interfering with the plots belonging to the petitioner is illegal and arbitrary. No proceedings known to law have been initiated against the petitioner, or no notices of any nature have been issued by the respondent. Hence, the petitioner is left with no such option except to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

8. W.P.M.P.No.2265 of 2007 is filed to vacate the interim order made in W.P.M.P.No.23541 of 2007 in W.P.No.18339 of 2007, dated 29-08-2007. This Court issued Rule Nisi on 29-08-2007 and pending further orders in W.P.M.P.No.23541 of 2007, interim direction as prayed for had been granted.

9. In the counter affidavit filed by the respondent-Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, represented by its Executive Officer, specific stand

had been taken that the said Devasthanam is the absolute owner of the said property and as such, the petitioner cannot make any construction, whatsoever, over the said land. Further, it is stated that the respondent-Devasthanam is endowed with vast extent of landed property situated in five villages namely 1)Advivaram, 2)Vepagunta, 3)Venkatapuram, 4)Purushothapuram, and 5)Cheemalapalli by the erstwhile Maharaja of Vizianagaram Estate. After Estate abolition, these villages are declared to be "NOT INAM ESTATES' under the provisions of the Estates Land Act of 1908 and Estates Abolition Act of 1948. Subsequently the provisions of the Andhra Inams Abolition and Conversion into Ryotwari Act 37/1956 (hereinafter referred to as 'Act' for the purpose of convenience) are made applicable to these five Inam villages and enquiries under the provisions of Sections 3 and 7 read with Section 4 were made by the Special Deputy Tahsildar (Inams), Visakhapatnam and Mandal Revenue Officer, Pendurthi, Visakhapatnam, and declared that these villages are Inam villages and the lands situated in these villages are Inam lands belonging to respondent Simhachalam Devasthanam. After the said Enquiry as per order, dated 05-09-1996, in A.I.A.No.53/77 of Mandal Revenue Officer, Pendurthi the ryotwari pattas were granted in favour of the respondent Devasthanam under Section 7 of the Act, for the lands covered by T.D.No.1273 of Purushothapuram village including the entire land situated in S.No.49 and S.No.50/1 of Purushothapuram village. Therefore, the petitioner cannot say that he is the absolute owner of the said land.

10. Further it is averred that as per the provisions of the Inam Abolition Act, 1956, the pre-existing right, title, and interest of the Inamdar and the occupier of the land stood extinguished with effect from 14-12-1956, on which date the Act came into force and new rights are sought to be declared. Accordingly, the

competent authorities made enquiries as per the provisions of the said Act and under Section 7 of the Act issued ryotwari pattas to the respondent Devasthanam. The grant of ryotwari patta in favour of the respondent Devasthanam is conclusive proof that Devasthanam is the absolute owner of the land. The orders of the Mandal Revenue Officer have become final. Therefore the petitioner cannot question the right, title, and ownership of Devasthanam over the land in question. The alleged position of the petitioner in the land, even assuming to be true, is illegal and unauthorized and he will be an encroacher only.

11. With reference to the averments made in this paragraph that the land in question is a jeroyati dry, it is submitted that it is cultivable land in an Inam village and not a poramboke land. Therefore, the competent authorities granted ryotwari patta to the temple. Otherwise they would have been declared as vested under Section 2A of the said Act in favour of the Government. The question of third party getting any right over the land does not arise.

12. Further, it is averred in paragraph 4 of the counter affidavit that the registered sale deeds said to have been obtained by the petitioner or others for the lands for which ryotwari pattas are granted to Devasthanam are not binding on Devasthanam. The so-called executants have no manner of right to sell the said endowed lands of the Devasthanam and the petitioner cannot claim any right over the Endowments land of the temple basing on the alleged sale deeds. It is also averred that the Government issued G.O.Ms.No.578, dated 19-08-2000, authorizing to issue Land Regularization Certificates in respect of lands of the Devasthanam unatthorizedly/illegally occupied by the individuals as per the scheme noted in the said G.O. after collecting the

amounts as per the rates mentioned area-wise in the Annexure appended to the said G.O. It is further stated that the individuals noted in paragraph 4 of the affidavit of the petitioner have filed applications seeking regularization of plots illegally occupied by them noted in the affidavit as per G.O.Ms.No.578, dated 19-08-2000.

(i) Pathiwada Seethamahalakshmi filed application in S.R.No.2999.
(ii) P.B.Joshna Rani filed application in S.R.No.3003.
(iii) Atluri Bhavani Devi filed application in S.R.No.3004.
(iv) Bobba Swatantra Kumari filed application in S.R.No.3002.
(v) Koneru Viplava Kumari filed application in S.R.No.3001 &
(vi) Bobba Jawaharlal filed application in S.R.No.3000.

As Vallabhaneni Ramesh and five others also have filed applications in S.R.No.2551 to 2559 of 2003 and 2336 of 2003 seeking regularization of the same plots claimed by the writ petitioner and as there is rival claim between the writ petitioner and others for the same sites, regularization certificates could not be issued by the Devasthanam to them.

13. It is further averred that the fact that the writ petitioner approached Devasthanam by filing applications seeking regularization of the sites in question under G.O.Ms.No.578, dated 19-08-2000, clearly goes to show that the writ petitioner is in illegal/unauthorized occupation of the temple land and got prepared layout, the petitioner cannot claim any ownership right over the sites. The land belongs to the respondent and under Section 7(1) of the Act, ryotwari patta was also granted in favour of Devasthanam and it is conclusive proof that Devasthanam is the absolute owner of the land. The petitioner is only in illegal and

unauthorized occupation of the land. As G.O.Ms.No.578, dated 19-08-2000, stood cancelled and as there is no possibility of regularization of plots claimed by the petitioner, he approached this Court. The petitioner cannot prevent the Devasthanam from protecting its lands.

14. Further, it is averred that the petitioner herein is not the absolute owner of the schedule property. The allegation that respondent Devasthanam officials have been threatening the petitioner is not correct. It is submitted that the respondent Devasthanam has got more than Ac.9000 of land situated within the limits of Visakhapatnam Greater Municipal Corporation. The value of the land in Visakhapatnam has been increased abnormally in recent years. Several land grabbers, Real Estate people, unscrupulous people, and societies have already encroached temple lands and still are attempting to encroach the lands and make constructions. Therefore, for the last five years the Devasthanam has been maintaining Land Protection Cell headed by Special Grade Deputy Collector by engaging Retired Army personnel and Home Guards. The squads are patrolling the lands day and night and protecting the encroachments, fresh constructions, and improvements over the existing constructions. While patrolling the land, Protection Cell officials noticed the petitioner trying to make small structures on the temple land. They informed the petitioner and his workers that the land belonged to the respondent Devasthanam and advised them not to make any constructions therein. Instead of heeding the advice of the squad, the petitioner approached the Hon'ble Court making untrue allegations and obtained temporary injunction orders and is trying to make constructions in the land by suppressing the facts.

15. The further averments made in paragraphs 6 and 7 also had been denied and the dismissal of the Writ Petition had been prayed

for.

16. A reply affidavit was filed reiterating the stand taken in the affidavit filed in support of the Writ Petition. It is averred in paragraph 3 of the reply affidavit that the contention of the respondent in the land in question has been endowed to it and that the said land belongs to it by virtue of the ryotwari pattas issued under the provisions of the Act is baseless and untenable. In this connection, it would not be out of place to mention that the Survey & Settlement Register
("Gilman Register") of the year, 1903, which is an authentic official record prepared under the provisions of the Madras Survey & Boundaries Act, 1897, shows the classification of the land in Sy.Nos.49 and 50.1 of Purushothapuram village as "zeroyati Dry" and not as "Inam" or "Poramboke." The Survey & Settlement authorities who conducted the survey and settlement operations and prepared the said record in the year, 1903, took great pains to clearly indicate the classification of the land so as to clearly show which land had been endowed in favour of the temple and thereby classified only the endowed land as "Inam". The respondent in the counter affidavit, has not denied the fact that the land in question is classified as "Zeroyati dry". This expression clearly shows that the land in question is not Inam land and that it was not endowed in favour of the temple, by the land holder. "Zeroyati" means the proprietor's private lands, which are cultivable and such land does not form part of the grant of Inam in favour of the temple. The presence of private lands in Inam villages in the Andhra Area is not an uncommon phenomena and the land in question is one such example. The said private land cannot be claimed by the temple, to be a grant in its favour when the Survey & Settlement Register prepared in 1903 shows that the land is "Zeroyati" and not "Inam". The concept and existence of private lands in Inam Estates and in

Inam villages is recognized under the provisions of the A.P. (AA) Estates Land Act, 1908 and the same is distinguishable from ryoti land, as defined in the said statute. The Survey & Settlement Register(Gilman Register) is of greatest significance and importance for the purpose of testing and establishing whether or not a particular extent of land was covered by the grant of Inam in favour of the temple. When the said record does not show the land in question as Inam, the temple cannot claim ryotwari patta in respect of the same. The names of the predecessors-in-title of the petitioner, namely viz Seera Apaiah, Sanyasi and Paidamma are shown in column No.8 of the Gilman Register, including that they were in possession of the said land in the year, 1903 itself.

17. It is also averred in paragraph 4 that the ryotwari pattas now being relied upon by the temple have been issued without jurisdiction by the Mandal Revenue Officer, Pendurthy. The proceedings of the Mandal Revenue Officer, Pendurthy would clearly indicate that the entire exercise was done in a post-haste and illegal manner, without there being any resurvey and resettlement operations. The proceedings indicate that though a notification was published under the provisions of the A.P.Survey & Boundaries Act, 1923 no resurvey and resettlement was conducted and that the ryotwari patta was issued, pending resurvey of the lands in Purushothapuram village. This is totally illegal and was done only with an intention to help the respondent temple and it is also evident that the said proceedings were issued in keeping with the directions of the High Level Official Committee and the Collector, Visakhapatnam for issuance of ryotwari pattas. This would only show that the statutory proceedings emanated without any enquiry or application of mind, pursuant to the directions of the higher authorities, and having taken a one-sided view in favour of the respondent temple, the ryotwari pattas were

issued without conducting resurvey and resettlement operations and without notices to the vendors of the petitioner. Further, the ryotwari pattas in favour of the respondent temple, had been issued by an incompetent authority i.e., the Mandal Revenue Officer, Pendurthy, even though the functions of the original authority under the provisions of the Act, at that point of time were being discharged by the Special Deputy Tahsildar, Inams, Visakhapatnam, a post which is even now in existence. The petitioner has filed an appeal before the Revenue Court (RDO, Visakhapatnam) on 05-10-2007, challenging the grant of ryotwari pattas to the respondent temple and the same is pending before the appellate authority, under the provisions of the Act. Petitioner was not aware of the fact of grant of ryotwari pattas till the counter affidavit was filed in this writ petition and upon verification with the petitioner's vendors, petitioner was informed that no notices were served on the occupants of the land either under the provisions of the Act, and that they were unaware of the fact of grant of ryotwari pattas to the respondent temple till now. The mere fact that the vendors of the petitioner had applied for regularization of occupation, neither takes away the title of private individuals, nor does it grant any right whatsoever to the respondent temple. This was done only to avoid litigation with the State and its instrumentality.

18. Further it is averred that all the documents under which the petitioner is claiming title (the documents have been filed along with the writ petition) are all registered sale deeds, which were received and registered by the registering authority, pursuant to the directions of this Court in proceedings under Article 226 of the Constitution of India, which arose because of a notification that had been issued by the Government under section 22-A of the Registration Act, 1908 and it is not open to the respondent to urge

either that the petitioner has no title or that the petitioner is in illegal occupation of the plots in question.

19. Further, it is averred that the allegation of the respondent that the petitioner is only in illegal and unauthorized occupation of the land is baseless. The occupation of the petitioner is legal and there is nothing unauthorized about such occupation. The respondent temple, being an instrumentality of the State, cannot resort to strong arm tactics and try to dispossess the petitioner from the plots belonging to it, as was being attempted prior to filing of the present writ petition. It cannot even resort to summary proceedings for eviction, but would have to establish its title over the land in question, by filing a regular civil suit.

20. Further, it is stated that the very basis for the claim of the respondent temple, over the land in question is the ryotwari patta granted under the provisions of the Act and the same has not attained finality and is subject matter of an appeal filed by the petitioner under Section 7 (2) of the said statute and is pending before the appellate authority i.e., Revenue Court (R.D.O.) Visakhapatnam.

21. These are the respective stands taken by the parties. Reliance was placed on the decision of the Division Bench in ***SRI ANJANEYA SWAMI TEMPLE, NANDIKOTKUR v. BADDULA LAKSHMAIAH AND OTHERS*** [1] wherein the Division Bench at paragraphs 8, 11 and 12 observed as follows:

> 8. "The following extract is the settled law regarding the importance to be given to the Inam Fair Register ever since the Privy Council rendered its decision in Arunachalam Chetty v. Venkatachapathi (37 Mad. LJ 460) (AIR 1919 PC 62):

" It is true that the making of this Register was for the ultimate purpose of determining whether or not the lands were tax free. But it must not be forgotten that the preparation of this Register was a great act of State, and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is to be remembered that the Inam Commissioner through their officials made enquiry on the spot, heard evidence and examined documents, and with regard to each individual property the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself. While their Lordships do not doubt that such a report would not displace actual and authentic evidence in individual cases; yet the Board, when such is not available cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the Inam Register".

In the same decision is also extracted Rule III, Clause I, Tax Free being part of Order 116 printed at page 211 of the Standing Orders of the Board of Revenue.

If the Inam was given for the religious or charitable objects, such as for the support of temples, mosques and other public buildings or institutions; or for services therein, whether held in the names of the institutions or of the persons rendering the services, it will be continued to the present holders and their successors, and will not be subject to further interference so long as the buildings or institutions are maintained in an efficient state and the services continue to be performed according to the conditions of the grant".

With the aforesaid preface, we now proceed to examine the various entries made in Exs.A1 and A.12 to determine the intention of the grantor and the nature of the grant; whether the grant was made to the Pagoda of Anjaneya Swami; whether the grant was made for the support of the Pagoda by way of remunerating the worshipper of the temple with the income arising therefrom or whether the grant was made to the Archaka attaching to the grant the burden of service to be rendered by the deity.

11.Our learned brother considered the circumstances viz., the grant of the title deed to the Manager for the time being of the Pagoda of Anjaneyaswami; the recital made therein acknowledging the title of the aforesaid Manager to a Devadayam or Pagoda Inam as being held for the support of the above Pagoda in that village as indicating the title of the temple to the land in question. He, however, considered para 2 of the title deed as supporting the aarchaka's title to the property. Para 2 of the title deed consists of two parts, the first being that the Inam is confirmed "to you and your successors" and the second being "to be held without interference so long as the conditions of the grant are duly fulfilled". We fail to see how the first part of para 2 of the Inam title deed supports the carchaka's claim of title. When the Inam title deed is issued in favour of the Manager for the time being of the temple, the reference made "to successors" in the context only indicates that the Inam is confirmed permanently. The first part of para 2 of the title deed cannot therefore, be treated as a circumstance militating in any manner against the temple's title to the property. The second part of para 2 of the

title deed has to be read in conjunction with "confirmed" appearing in Co.22 of the Inam Fair Register. In Koteswara Rao's case (AIR 1937 Mad 852) (supra) the Madras High Court had occasion to consider a number of inam fair register extracts and title deeds in a batch of appeals. It was held:

"It may here be observed that having regard to the scheme of the register, the most decisive entries are those appearing in Cols.13 to 16, for, it is here that provision is made for the entering of the name of the grantee, as shown in the relevant ancient records at different stages from the date of the grant to the date of the preparation of the register this period covering in some case more than a century. Again a distinction has been sought to be made on the basis of the entries in Col.21. The phraseology of the Deputy Collector's recommendation was not uniform. In some cases it merely ran 'to be confirmed; in certain cases, the language used was "to be confirmed and continued so long as the service is regularly performed". That no difference was in fact intended is shown by a comparison of the registers in CMA.Nos.290 and 120 of 1934. The entries in the statement and those in the register in CMA No.299 of 1934 make it perfectly clear that the grant made to the deity; the recommendation in Col.21 there was " to be confirmed". In CMA No.120 of 1934 the admissions of the previous archakas and the entries in the register likewise show indubitably that the grant was intended to be to the deity, but in Col.21 we find that the recommendation, although based on data similar to what existed in the previous case, was differently worded which fact shows, as already stated, that this

difference in the phraseology is immaterial".

The Supreme Court in Lakshmi Narasimha Chari v. Agastheswaraswamivaru (1960 SCJ 954): (ASIR 1960 SC 622) after considering Koteswara Rao's case (AIR 1937 Mad 852) (supra) and some other case decided by the Madras High Court observed:

"This distinction was prominently brought out between the words "to be confirmed so long as he continues the performance of the service:. The latter was held to be a personal grant and the former was not so held:.

The recommendation of the Deputy Collector under Col.21 was merely to confirm the Inam under Rule III, Clause 1 tax free. It was that recommendation that was accepted by the Special Assistant and the Inam was confirmed. We have earlier extracted the specific R.III, which takes alike in its ambit grants given for a religious object such as support of temples or for service therein, whether held in the names of the institutions or of the persons rendering the services. In terms of that Rule, the Inam was to be continued to the present holders and their successors so long as the institution is maintained in an efficient state and the services continued to be performed according to the conditions of the grant. Para 2 of the Inam title deed does not detract in any manner from the title of the temple to the Inam recognized by the Inam Commissioner. We, therefore, find ourselves unable to approve of the reasoning given by our learned brother that para 2 of the Inam title deed supports the

title to the archaka in any manner. In Narasimhulu v. Rachamalla Chinna Ramaiah (1955 (1) Andh WR 293), Subba Rao, C.J., (as he then was) observed:

"The words " so long as the service was performed" in the context can only mean so long as the temple was maintained as an institution by performing the necessary service".

12. In Sri Vallabharanaswami Varu of Swarna v. Deevi Hanumacharulu (1968) 1 Andh WR 242: (AIR 1969 Andh Pra 392), a Division Bench of this Court held that it is the Inam title deed which prevails over any other revenue accounts as it is the source of title. After considering some decisions noticed therein, they have deduced the following conclusions (at p.397)

"Though the inam is described as Devadayam, it is not conclusive of the fact that it was granted to the delay but it merely indicates that it is for a religious purpose. Unless the grant is made in favour of the Deity or the Manager for the time being, as representing the temple, it cannot be considered as a grant to the Deity. The mere fact that Col.22 of the Inam Fair Register does not mention the name of the individual in whose favour the inam is to be confirmed does not conclude the matter in view of the fact that Col.21 of the Inam Fair Register contains a clear recommendation that the inam should be confirmed to an individual. The recommendations contained in the Inam Fair Register have to be read along with the recitals in the main title deed which was issued as a result of the inam proceedings".

In the case on hand, the inam title deed is in favour of the Manager for the time being, as

> representing the temple. The entries in the Inam Fair Register cannot, therefore, be construed as indicating any grant made to the archakas.

22. In relation to the meaning of "Zeroyati", strong reliance was placed on the decision of the Madras High Court in ***DADAMUDY TATAYYA AND OTHERS v. KELACHINA VENKATASUBBARAYYA SASTRI***[2] wherein it was held that the word "jeroyati land" may mean cultivable or arable land. But it may also mean "assessable or assessed land" as opposed to inam land. It is only the context that must decide which meaning is to be given to the word. The word "jeroyati" especially when prefixed to the word "right" or Hakkuq has come to mean "rights of occupancy".

23. Further strong reliance was placed on the decision of the Apex Court in ***VATTICHERUKURU VILLAGE PANCHAYAT v. NORI VENKATARAMA DEEKSHITHULU AND OTHERS (Civil Appeal No.931 of 1977) NORI MADHUSUDAN AND OTHERS v. VATTICHERUKURU VILLAGE PANCHAYAT (Civil Appeal No.200 of 1978)***[3] wherein at paragraphs 13 and 14 the Apex Court observed as follows:

> 13. Construction of the relevant entries in the IFR is a question of law. Column 2, the general class to which the land belongs, described as 'Dharmadayam' endowment for a charitable "institution", column 7, description of tenure for the "preservation and repairs" of Nori Lakshmipathi Somayajulu Western Tanks at Vatticherukuru, column 9 tax free, column 10, nature of the tenure, permanent, column 11, guarantor of the land Raja Manikya Rao in 1190 Fasli (1700 AD), column 13, name of the original grantee 'Nori Lakshmipathi Somayajulu', column 21 to

be confirmed under usual conditions of service and column 22, confirmed. In the survey and settlement record of the year 1906 the same columns have been repeated. The lands in the tank were classified as village 'poramboke' and the tank as 'village tank'. In the village map also the same remarks were reiterated. Therefore, the entries in the IFR are great acts of the State and coupled with the entries in the survey and settlement record furnish unimpeachable evidence. On construction of these documents, it would clearly emerge that the original grant was made for the preservation and maintenance of the tank and tax free inam land was granted for that purpose though it was in the name of the individual grantee. We are of the view that the grant was for the preservation and maintenance of the tank. In K.V.Krishna Rao v. Sub-Collector, Ongole, this Court held under the Inam Act that the tank is a charitable institution. Thereby we conclude that the grant was for the institution. Under Section 3 of the Inams Act, the enquiry should be whether (1) a particular land is inam land; (2) inam land is in a ryotwari zamindar or inam village; and (3) is held by any institution. In view of the finding that the grant was for the preservation and maintenance of tank, the inam land in an inam village was held by the institution, namely, the tank. Ryotwari patta shall, therefore, be in favour of the institution. Undoubtedly the ryotwari patta was granted in favour of the descendants. In Nori Venkatarama Dikshitulu v. Ravi Venkatappayya', in respect of the tope dedicated to the public benefits in the same village, namely Vatticherukuru, one of the questions that arose was whether the patta granted in the individuals' names, the

trustees of an institution cannot derive personal advantage from the administration of the trust property. It was held that the grant of patta was for the maintenance of the trust. We approve that the law was correctly laid down.

14. In Krishan Nair Boppuri Punniah v. Lakshmi Narasimhaswamy Vani, relied on by Shri Sitaramaiah, on the basis of the entries in IFR, the finding was that the grant was in favour of the individual burdened with service and not to an institution. Therefore, the ratio therein does not assist us to the facts in this case. Moreover, in view of the stand taken by Shri Sitaramiah that the lands are not the private property of NLS or his descendants but held by them as trustees, the grant of ryotwari patta to the individuals by necessary implication, as a corollary, is of no consequence. The question then is whether the enjoyment of the usufruct by the descendants would clothe them with any right as owners of the land. In view of the concurrent finding that descendants did not acquire title by prescription, the passage in Tagore Law Lecture, “Hindu Religious Endowments and Institutions” at p.6 relied on by Shri Sitaramiah to the effect ‘dedication of tanks and trees’ as private property also renders no assistance to the descendants. Undoubtedly, a presumption of an origin in lawful title could be drawn, as held in Syed Md.Mazaffaralmusavi v. Bibi Jabeda Khatiun, that the court has so often readily made presumption in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming. It is not a mere branch of law of evidence. It was resorted to because of the failure of actual evidence. The matter is one of presumption based upon the policy

of law. It was also further held that it is not a presumption to be capriciously made nor is it one which a certain class of possessor is entitled to, *de jure*. In a case such as the one in question where it was necessary to indicate what particular kind of lawful title was being presumed, the Court must be satisfied that such a title was in its nature practicable and reasonably capable of being presumed without doing violence to the probabilities of the case. It is the completion of a right to which circumstances clearly point where time had obliterated any record of the original commencement. The longer the period within which and the remoter the time when first a grant might be reasonably supposed to have occurred the less force there is in an objection that the grant could not have been lawful. In Bhojraj v. Sita Ram, it was further held that the presumption, not to supplement but to contradict the evidence would be out of place. A presumption should be allowed to fill in gaps disclosed in the evidence. But the documentary evidence in the IFR and the survey and settlement records furnish the unerring evidence. Though the original grant was not produced, the grant was for the institution and not to the individuals. Therefore, the colour of title though enabled them to enjoy the usufruct for personal use, once the tank and the appurtenant land was found to be public tank, the descendants acquired no personal right over it. The Narsapur, relied by Shri Sitaramasiah the finding was that the grant was to the plaintiffs' family subject to conditions of service. Their right to take the usufruct of the trees therein was held to be for the benefit of the grantee. In that view its ratio cannot be applied to the facts in this case. In M.Srinivasacharyulu v.

Dinavahi Pratyanga Rao, one of the contentions raised was that since the produce was being enjoyed by the trustees for over many years for personal use, it must be construed that the trust be a dangerous proposition to lay down that if the trustees of the religious trusts have for many years been applying the income to their own personal use, the trust deed must be construed in the light of such conduct. The decree of the trial Court that the enjoyment was for the institution was upheld. The finding in Civil Appeal No.931 of 1977, that since the endowment was the dashabandam the descendants are entitled to the ryotwari patta cannot be upheld. Dashabandam grant of land burdened with the service of a public nature was made at a time when maintenance of water sources and water courses to the benefits of the villagers was left to the villagers. In Ravipati Kotayya v. Ramasami Subbaraydu, it was held that in the case of dashabandam inasms situated in ryotwari villages, the government has the right of resumption on default of service. The lands burdened with dashabandam service which is a service of public nature, are inalienable as being against public police, we, therefore, hold that the descendants, though enjoyed the income from the properties, did not effect the repairs and neglected the maintenance and upkeep of the tank. They rendered the tank disused and abandoned. By operation of Section 85 of the Act the lands and tank stood vested in the Gram Panchayat for control, management and supervision.

24. Further reliance was placed in ***STATE OF ORISSA AND OTHERS v. BRUNDABAN SHARMA AND ANOTHER*** [4]

wherein the Apex Court while dealing with the provisions of the Orissa Estates Abolition Act, 1951 observed at paragraph 12 as follows:

> 12. It is true that the *suo motu* revisional powers under the Act were brought on the statute on 07-11-1973 by the Amendment Act, 1973. Earlier, under Section 38-A to exercise review power, limitation prescribed was one year that too on an application made by an aggrieved party. Thereby, the legislature realized the need to confer power on the Board of Revenue to take *suo motu* action to examine the proceeding of any authority and if need be to correct its illegality, impropriety or incorrectness of the order passed, decision made or proceedings taken under the Act. Otherwise miscarriage of justice would ensue. Accordingly, it brought on statute Section 38-B and conferred *suo motu* revisional jurisdiction and power on the Board of Revenue. It is not right to contend that Section 38-B has been given retrospective effect. The Board of Revenue was empowered to initiate action only after Section 38-B had come into force. Obviously it has to exercise revisional power with reference to the orders, decisions made or proceedings taken under the Act earlier thereto. Otherwise it bears no significance to confer *suo motu* power. That apart, Section 38-A gives only the power of revision to the Board to correct orders passed or decisions made or proceedings taken by any authority under the act prior to Section 38-B came into force. But initiation of revisional power must be from and after Section 38-B came into force. In other words, its operation is prospective only. When and under what circumstances the *suo motu* inquiry would be initiated and orders passed is left to the

discretion of the Board of Revenue depending on the facts and circumstances of each case.

25. Further reliance was placed on ***RAMJI RAM AND OTHERS v. BANSI RAUT AND OTHERS*** [5] wherein the Patna High Court in relation to Record of Rights and Entries in Record and the presumption thereto held that the entries in Record of Rights that lands are Zerait qaimi or zerait dakhilkar or zerait Gair dakhilkar shall be presumed to be correct until contrary is proved, by the tenants.

26. Further, strong reliance was placed in ***SANTOKHI MANDAL AND OTHERS v. RAMESHWAR SINGH BAHADUR*** [6] wherein it was held that no doubt where it is not shown that the land was cultivated by the proprietor himself or recognized by village usage as proprietor's land, there is presumption that the land is not proprietor's private land but it can be shown by the proprietor though he has never cultivated the land himself, it is nevertheless his private land.

27. A copy of Survey Settlement Register of Purushothapuram village, Vijayanagara Samsthanam, Pedagadi Tahna had been placed before this Court and the meaning of the zirayathi had been argued in elaboration. This Court sitting as a Writ Court cannot go into all the factual controversies.

28. In the light of the facts and circumstances, liberty is given to the writ petitioner to agitate the rights by invoking appropriate legal remedies. This Court is not inclined to express any further opinion regarding the merits of the matter. The remedy by way of Writ Petition, in the facts and circumstances of the case invoked by the writ petitioner, is a misconceived remedy. Accordingly,

status quo obtaining as on today to be maintained for a period of four weeks giving liberty to the petitioner to invoke appropriate remedies in accordance with law.

29. Accordingly, Writ Petition is disposed of. No order as to costs.

P.S.NARAYANA,J

12th December, 2007.

Note:

LR Copy to be marked.

B/o

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[1] AIRE 1982 ANDHRA PRADESH 300

[2] AIR 1928 MADRAS 786

[3] 1991 Supp(2) Supreme Court Cases 228

[4] 1995 Supp (3) Supreme Court Cases 249

[5] 1925 Patna 241

[6] AIR 1929 Patna 41